

DOCKET FILE COPY ORIGINAL

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

In the Matter of

Federal-State Joint Board on
Universal Service

)
)
)
)

MAY - 5 2003

CC Docket No. 96-45

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

TO: Federal-State Joint Board on Universal Service

COMMENTS OF THE WESTERN ALLIANCE

Gerard J. Duffy
Blooston, Mordkofsky, Dickens, Duffy &
Prendergast
2120 L Street, NW (Suite 300)
Washington, DC 20037
Telephone: (202) 659-0830
Facsimile: (202) 828-5568

Dated: May 5, 2003

No. of Copies rec'd
List A B C D E

014

Table of Contents

	<u>Page</u>
I. SUMMARY	ii
II. COMMENTS OF THE WESTERN ALLIANCE.....	1
III. BACKGROUND: THE WESTERN ALLIANCE.....	2
IV. POSITION OF THE WESTERN ALLIANCE	4
V. THE FCC AND STATE PUCs NEED TO ADOPT AND IMPLEMENT REASONABLE AND EQUITABLE STANDARDS FOR DESIGNATING AND REGULATING CETCs.....	8
VI. HIGH-COST SUPPORT SHOULD BE CALCULATED AND DISTRIBUTED ON THE BASIS OF EACH CETCs STUDY AREA WITHIN EACH STATE.....	17
VII. AUCTIONS OF UNIVERSAL SERVICE SUPPORT WOULD DISRUPT AND DISCOURAGE TELECOMMUNICATIONS INFRASTRUCTURE INVESTMENT.....	20
VIII. CONCLUSION.....	21

Summary

The Western Alliance urges the Joint Board and FCC to address and resolve the universal service portability issues in this proceeding in a manner that recognizes and advances the overriding goal of the Telecommunications Act of 1996 -- namely, to encourage private sector investment in telecommunications infrastructure.

The most critical need at present is for the Joint Board and FCC to implement the statutory requirement of Section 214(e) of the Communications Act that designations of Competitive Eligible Telecommunications Carriers ("CETCs") in rural telephone company study areas be made only when they are in the public interest. The Western Alliance proposes that this public interest requirement be implemented by requiring specific cost-benefit tests to be met by carriers requesting CETC status. Potential CETCs would be required to demonstrate that the new infrastructure investment and other concrete service, service area, service quality and rate benefits resulting from their designation as CETCs will outweigh the additional portable support outlays and other costs thereof. In addition, the Western Alliance proposes that all wireline and wireless CETCs be subject to the same competitively neutral carrier of last resort obligations, service quality standards and rate regulation as incumbent local exchange carriers ("ILECs"), and that state commissions be required to fund the resulting additional high-cost support for the CETCs they designate.

Where a wireline or wireless carrier is designated as a CETC, the Western Alliance proposes that it be assigned a "study area" in each state for the determination,

calculation and distribution of its high-cost support. This study area requirement will recognize the fact that telecommunications carriers construct and operate networks, and will eliminate some of the market entry and investment distortions of the current "per-line" system that favor wireless carriers over wireline carriers. In particular, the Joint Board and FCC should stop allowing wireless CETCs to receive substantial amounts of portable high-cost support in rural telephone service areas, when the major portion of their customer base is located in the low-cost urban and suburban areas of a state. Rather, CETCs should be assigned a study area in each state at the time they are designated as CETCs, and should receive high-cost support only if warranted by the averaged costs of their total urban, suburban and rural operations within that study area.

Finally, the Western Alliance opposes the use of auctions or other competitive bidding mechanisms to determine eligibility for or amounts of support. Auctions will produce uncertainty and instability that would render it economically infeasible for many rural carriers to make long-term investments in telecommunications infrastructure.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	

TO: Federal-State Joint Board on Universal Service

COMMENTS OF THE WESTERN ALLIANCE

The Western Alliance hereby submits its comments in response to the Public Notice (Federal-State Joint Board On Universal Service Seeks Comment on Certain of the Commission's Rules Relating to High-Cost Universal Service Support and the ETC Designation Process), CC Docket No. 96-45, FCC 03J-1, released February 7, 2003 ("Public Notice").

The Western Alliance believes that existing and future issues with respect to the portability of high-cost support can be resolved effectively and equitably if federal and state regulators focus upon the overriding goal of the Telecommunications Act of 1996 -- the encouragement of private sector investment in telecommunications infrastructure. At present, the most severe problem is the designation of increasing numbers of Competitive Eligible Telecommunications Carriers (CETCs) by the Federal Communications Commission (FCC) and state commissions with little or no assurance that the resulting rapid growth in portable support is producing any significant public interest benefits. The Western Alliance proposes that the statutory public interest test in Section 214(e) of the Act be actually implemented, and that CETC designations be limited to instances where new infrastructure investment and other tangible benefits of such designations outweigh

the costs. In addition, the Western Alliance proposes that state commissions designating CETCs share the burden of the resulting additional support costs, and that all carriers seeking and obtaining Eligible Telecommunications Carrier (ETC) designation be subject to the same competitively neutral regulation as a condition of their ETC status.

The Western Alliance proposes that high-cost support for all CETCs be calculated and distributed on the basis of the CETC's own study area in each state. Because all wireline and wireless telecommunications carriers build and operate networks rather than lines, the current focus upon calculation of portable CETC support on the basis of incumbent local exchange carrier (ILEC) lines has distorted the investment and entry decisions of wireline and wireless CETCs. The efficient and competitively neutral solution is to designate a study area for each CETC in each state, and to determine availability and amount of high-cost support for CETCs on the basis of their actual or estimated per-customer costs in each study area.

Finally, the Western Alliance opposes the use of auctions or any other form of competitive bidding to determine either eligibility for, or the amounts of, high-cost support. Infrastructure investments are made on the basis of long-term plans, and are recovered over lengthy periods. By creating uncertainty as to whether investment costs would continue to be recovered, competitive bidding would discourage infrastructure investment.

The Western Alliance

The Western Alliance is a consortium of the Western Rural Telephone Association and the Rocky Mountain Telecommunications Association. It represents about 250 rural telephone companies operating west of the Mississippi River.

Western Alliance members are generally small local exchange carriers ("LECs") serving sparsely populated rural areas. Most members serve less than 3,000 access lines overall, and less than 500 access lines per exchange. Their revenue streams differ greatly in size and composition from those of the price cap carriers. Most members generate revenues much smaller than the national telephone industry average, and rely upon universal service dollars for the recovery of 40 percent or more of their costs.

Western Alliance members incur per-customer facilities and operating costs far in excess of the national average. Not only does their small size preclude their realization of significant economies of scale, but also they serve remote and rugged areas where loop and switching costs per customer are much higher than in urban and suburban America.¹ Their primary service areas are comprised of sparsely populated farming and ranching regions, isolated mountain and desert communities, and Native American reservations. In many of these high cost rural areas, the Western Alliance member not only is the carrier of last resort, but also is the sole telecommunications provider ever to show a sustained commitment to invest in and serve the area.

Western Alliance members are highly diverse. They did not develop along a common Bell System model, but rather employ a variety of network designs, equipment types and organizational structures. They must construct, operate and maintain their networks under conditions of climate and terrain ranging from the deserts of Arizona to

¹ The FCC has noted an estimated \$866.27 cost for a loop in a Wyoming wire center and compared it with an estimated \$9.97 cost for a loop in a New York City wire center. It noted further that overhead cost adjustments could greatly increase this cost difference. Second Report and Order and Further Notice of Proposed Rulemaking in CC Docket No. 00-256, Fifteenth Report and Order in CC Docket No. 96-45, and Report and Order in CC Docket Nos. 98-77 and 98-166 (Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers), FCC 01-304, released November 8, 2001, at para.45 and n.140.

the rain forests of Hawaii to the frozen tundra of Alaska, and from the valleys of Oregon to the plains of Kansas to the mountains of Wyoming.

Predictable and sufficient cost recovery is essential to Western Alliance members if they are to continue investing in and operating telecommunications facilities in high-cost rural areas, while providing quality services to their rural customers at affordable rates. Therefore, the Western Alliance has found it necessary to participate in this and other CC Docket No. 96-45 proceedings.

Position of the Western Alliance

The overriding goal of the Telecommunications Act of 1996 is to encourage private sector investment in telecommunications infrastructure, particularly that necessary for the delivery of advanced telecommunications and information services. The Conference Report for the 1996 Act (H. Rept. 104-458) clearly and explicitly declared that the pro-competitive, deregulatory national policy framework of the Act was "designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans." 142 Cong. Rec. H1078 (January 31, 1996).

"Fostering competition" and "maintaining universal service" are not (and never were) the "goals" or "dual goals" of the 1996 Act. Rather, they were the two principal "means" designated by the Congress as the tools to achieve its infrastructure investment goal.

During the mid-1990s, the Clinton Administration and Congress wanted the public network to be upgraded to accommodate the new voice, data and video services made possible by advancing technology. However, budget deficits and political

constraints prevented the use of public funds for infrastructure investment. The statutory solution was to encourage infrastructure investment by reducing regulation and promoting competition among the various entities in the converging telecommunications, computer and video industries.

However, recognizing that airline deregulation/competition had previously resulted in service losses for many rural communities, Congress added the universal service provisions of Section 254 as a "safety net" for rural and other high-cost areas where competition might not develop or might not produce the desired infrastructure investment. As Senator Byron Dorgan of North Dakota stated during the Senate discussion of the 1996 Act:

I come from a rural State. I know there are a lot of people in this Chamber who worship at the altar of competition and the free market. That is wonderful. But, I have seen deregulation. . . . Example: Airline deregulation. There was a move in this country and in these Chambers for airline deregulation, saying this will be the nirvana. If we get airline deregulation, Americans are going to be better served with more choices, more flights, lower prices, better service.

Well, that is fine. That has happened for some Americans but not for all Americans. Deregulation in the airline industry has had an enormously important impact if you live in Chicago or Los Angeles. ...

But I bet if you go to the rural regions of Nebraska, and I know if you go to the rural regions of North Dakota and ask consumers, what has airline deregulation done to their lives, they will not give you a similar story. . . . In fact, airline deregulation has largely, in my judgment, hurt consumers in rural America. We have fewer choices at higher prices as a result of deregulation.

* * *

First, a one-size-fits-all approach to competition in the local exchange may have destructive implications. In large, high-volume urban markets, competition will certainly be positive. However, in smaller, rural markets, competition may result in high prices and other problems. The fact is that in some markets (namely, high-cost rural areas) competition may not serve the public interest. If left to market forces alone, many small rural markets would be left without service.

That is why the protection of universal service is the most important provision in this legislation. S. 652 contains provisions that make it clear that universal service must be maintained and that citizens in rural areas deserve the same benefits and access to high quality telecommunications services as everyone else. 141 Cong. Rec. S. 7947-51 (June 8, 1995).

Senator Dorgan's concerns were echoed by legislators from both parties, including Senator Larry Pressler of South Dakota,² Senator Thomas Daschle of South Dakota³ and Senator Ernest Hollings of South Carolina.⁴

High-cost support is not a subsidy or a gift, but rather is a cost recovery mechanism necessary to encourage and enable investment in telecommunications infrastructure in rural areas. Given the high costs, small populations and minimal economies of scale of many rural areas, it would not be not financially feasible for owners and lenders of many rural telephone companies to invest in the facilities and services mandated by federal and state regulators if there were no reliable and sufficient mechanisms to recover their investment costs. As federal and state regulators consider "bill and keep" arrangements that would totally eliminate access charges, high-cost support may soon become the predominant cost recovery mechanism for many rural telephone companies.

High-cost support should be calculated and distributed to telecommunications carriers on the same basis that telecommunications facilities are constructed and that

² "[T]his bill is also responsibly deregulatory. When it comes to maintaining universal access to telecommunications services, for instance, it does that. It establishes a process that will make sure that rural and small-town America doesn't get left in the lurch." 141 Cong. Rec. S7887-88 (June 8, 1995).

³ "While legislation focuses on competition and deregulation, the bill before us also contains essential rural safeguards. It would create a Federal-State Joint Board to oversee the continuing issue of rural service and to monitor and help evolve a definition of Universal Service that makes sense for the present day and for the kinds of services that will be coming on-line. 141 Cong. Rec. S8478 (June 15, 1995).

telecommunications services are provided -- namely, as networks (which can be represented by study areas). Carriers do not invest in and construct "lines"; they build networks. Customers do not purchase service on "lines"; they subscribe to service on a network so that they can communicate with all the other people connected to the network.

The Western Alliance believes that many of the problems and distortions of the current portable high-cost support mechanism are due to a lack of focus upon the essential network character of telecommunications investment and service. Calculation and distribution of universal service support to both incumbent local exchange carriers (ILECs) and competitive eligible telecommunications carriers (CETCs) on a "per line" basis has distorted both infrastructure investment and support outlays because both ILECs and CETCs build and operate their facilities as networks rather than as lines.

The other primary source of problems and distortions is the misguided notion that high-cost support should be used to promote competition rather than to promote infrastructure investment where competition does not develop or does not produce sufficient investment. As Commissioner Kevin J. Martin stated in his Separate Statement regarding the MAG Order⁵:

I also note that I have some concerns with the Commission's policy - adopted long before this Order - of using universal support as a means of creating "competition" in high cost areas. I am hesitant to subsidize multiple competitors to serve areas in which costs are prohibitively expensive for even one carrier. This policy may make it difficult for any one carrier to achieve the economies of scale necessary to serve all of the customers in a rural area, leading to inefficient and/or stranded investment and a ballooning universal service fund. It is thus with real pause that I sign on to an Order that may further this policy.

⁴ "Special provisions in the legislation address universal service in rural areas to guarantee that harm to universal service is avoided there." 142 Cong. Rec. S687 (Feb. 1, 1996).

⁵ Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers, Second Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 00-256, FCC 01-304, released November 8, 2001.

The Western Alliance is not opposed to rural competition that arises from natural market forces, or to a true principle of competitive neutrality that does not favor or disfavor any class of carriers or any technology. However, it agrees with Commissioner Martin that portable high-cost support should not be used to attract competitors to areas they would not otherwise serve. This is particularly true where the "attraction" is in the form of portable support that bestows windfalls upon CETCs because it is based upon: (a) the costs of ILEC investments for services and service quality that the CETCs do not provide; and (b) the costs of ILEC regulatory requirements to which the CETCs are not subject.

With these principles in mind, the Western Alliance: (1) supports the employment of specific and rigorous cost-benefit analyses to limit the designation of additional ETCs in rural telephone company service areas to instances where such designations will serve the public interest; (2) proposes that all wireline and wireless ETCs be subject to competitively neutral requirements regarding services, service areas, service quality and rates; (3) recommends that state commissions that designate multiple ETCs in overlapping service areas be required to fund the resulting additional high-cost support; (4) recommends that CETCs be assigned study areas in each state for the calculation and distribution of high-cost support; and (5) opposes the use of auctions or other competitive bidding mechanisms to determine eligibility for or amounts of support.

**The FCC and State PUCs Need To Adopt and Implement
Reasonable and Equitable Standards for Designating and Regulating CETCs**

In response to the Joint Board's request for comment regarding the designation of ETCs under Section 214(e) of the Communications Act (Public Notice, paras. 33 and 34),

the Western Alliance proposes: (1) that an entity seeking designation as a CETC in an area served by a rural telephone company be required to demonstrate that the tangible public interest benefits of such designation exceed the costs; (2) that all entities that voluntarily seek and obtain ETC status and high-cost support within overlapping service areas be subject to the same "competitively neutral" regulatory requirements, including carrier of last resort obligations, service quality standards, rate regulation and other service and regulatory mandates; and (3) that state commissions electing to designate CETCs in areas served by rural telephone companies be required to fund the incremental portable support from their State Universal Service Funds.

Public Interest Showing. Sections 214(e)(2) and 214(e)(6) of the Act expressly require state commissions and the FCC (on Reservations and other limited instances where a state commission lacks jurisdiction) to make a specific finding that the designation of an additional ETC for an area served by a rural telephone company is "in the public interest." Whereas Senator Dorgan, Commissioner Martin and others have recognized that artificial "competition" and multiple USF recipients might not encourage appropriate infrastructure investment or improve service in many rural areas, the FCC and many state commissions have largely disregarded the statutory public interest requirement. Instead, they have routinely rubber-stamped requests for designation of CETCs in rural telephone service areas, often on little more than bare assertions that the designation of multiple CETCs will "promote competition" or "increase consumer choices."⁶

⁶ Se, e.g. Order on Remand (Western Wireless Corporation Designated Eligible Carrier Application), Case No. PU-1564-98-428 (North Dakota Public Service Commission, Oct. 3, 2001); Memorandum Opinion and Order (Federal-State Joint Board on Universal Service; Western Wireless Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming), 16 FCC Rcd 48, 55 (2000).

As a result, the most rapidly growing portion of the Universal Service Fund during recent years has been portable support for wireless CETCs. This has increased from nothing in 1998, to \$440 thousand in 1999, to \$2.13 million in 2000, to \$11.27 million in 2001, to \$68.68 million in 2002, to a projected \$101.85 million in 2003.⁷ If the FCC and many state commissions continue to grant requests for designation of additional CETCs in rural telephone company service areas, this segment of the USF may increase by \$2 billion or during the next few years.⁸ In fact, the ease of receipt and lack of obligations of CETC status is virtually forcing wireless carriers that do not yet receive portable high-cost support to seek and obtain CETC status in order to keep pace with their wireless competitors.

Unfortunately, these burgeoning amounts of portable high-cost support for wireless CETCs do not appear to be producing comparable amounts of new wireless infrastructure investment in Rural America. Instead, there are concerns that substantial numbers of the "working loops" for which wireless CETCs are requesting and receiving portable support represent pre-existing customers, and that the portable support received for such "working loops" constitutes "found money" more likely to increase wireless profits than to produce additional wireless infrastructure investment. In addition, there are concerns that the use of "billing addresses" to depict the "location" of wireless customers is resulting in the payment of large amounts of portable support for wireless phones that are allegedly "located" in rural telephone company study areas (where per-

⁷ Source: OPASTCO, Universal Service in Rural America: A Congressional Mandate at Risk (January 2003), at Table 3.

⁸ McLean & Brown Issue Update, "One Year Later - One Year Closer: The Coming Train Wreck in Universal Service Funding" (January 18, 2003) at p. 4.

line portable support is high) but that are actually being used primarily or entirely in urban and suburban areas (where portable support is low or unavailable).

The most feasible and practicable way to comply with the statutory public interest requirement is to require the FCC and state commissions to conduct a detailed and specific cost-benefit analysis before designating an additional ETC in an area served by a rural telephone company. Every entity requesting designation as an ETC should be required to show that the specific and tangible public interest benefits of such designation exceed the specific additional costs thereof.

The proposed cost-benefit test should not be satisfied by vague promises that the additional ETC will "enhance competition" or "increase consumer choices" or "promote deployment of new technologies." True competitive neutrality requires the FCC and state commissions to stop accepting vague assertions of "enhanced competition" from prospective CETCs as a substantial basis for granting their designation requests, while scorning claims of "economic harm" and "erosion of universal service support" from ILECs as speculative. The proposed cost-benefit test would require both the proponents and the opponents of the designation of an additional ETC to produce evidence of specific and tangible benefits or costs.

Because infrastructure investment is the predominant goal of the 1996 Act, all entities requesting designation as a CETC should be required to submit a detailed and specific plan showing: (1) the new infrastructure they propose to deploy in the area for which they are requesting CETC status; (2) the estimated cost of the proposed infrastructure investment; and (3) the proposed schedule for deployment of the new infrastructure. If CETC status is granted, it should be conditioned upon compliance with

the requesting entity's proposed infrastructure investment plan and schedule, and should be revoked in the event of non-compliance.⁹

In addition to mandatory infrastructure investment plans, entities seeking designation as CETCs would also be able to present evidence of additional public interest benefits in the form of: (1) the specific existing or new telecommunications and information services that they propose to deploy in the area for which they are requesting CETC status, together with a specific timetable for such deployment(s); (2) the specific areas (including unserved and underserved areas) that they propose to serve, together with a specific timetable for the introduction of service in each area; (3) the specific service quality standards they will implement, together with a specific timetable for implementing these standards and specific procedures for monitoring them; and (4) the specific affordable rates that they will charge for each proposed service option. The information regarding specific services and service areas will help the designating authority determine the extent to which the proposed ETC designation will produce benefits in the form of increased access by rural consumers to telecommunications and information services that are reasonably comparable to those provided in urban areas (thus advancing the criteria in Section 254(b)(2) of the Act), as well as clarifying the degree to which competition will be enhanced and consumer choices increased. The information regarding service quality and affordable rates will help the commission determine the extent to which the proposed ETC designation will produce benefits by advancing the quality and affordability criteria of Section 254(b)(1) of the Act.

⁹ Where relatively brief delays in compliance were found by the FCC or state commission to be justified, limited waivers or brief extensions could be granted.

The primary "cost" of each proposed CETC designation will be the incremental portable high-cost support resulting from it. In addition, previously-designated ETCs may present evidence that designation of an additional CETC will preclude or delay their investment in specific infrastructure upgrades or additions, or otherwise result in specific reductions in the services or service quality that they will be able to provide.

The FCC or state commission should then be required to balance the benefits of the proposed CETC's infrastructure investment plan (plus any additional specific service, service area, service quality or rate benefits) against the costs of the incremental high-cost support (plus any specific investment, service or service quality cut-backs by existing ETCs). If the commission determines that the specific benefits exceed the specific costs, it will rule that the Section 214(e) public interest test is met and designate the additional ETC. If it determines that the specific costs exceed the specific benefits, it will deny the ETC designation request for failure to satisfy the public interest test.

The most efficient and effective way to implement the proposed public interest test would be for the Joint Board to recommend regulations and evidentiary requirements that the FCC could adopt and that the FCC and all state commissions would follow. Section 214(e) expressly contemplates that both state commissions and the FCC find that designation of additional ETCs is in the public interest. Moreover, Section 254(f) of the Act gives states express authority to adopt universal service regulations not inconsistent with FCC rules, including regulations that provide for additional definitions and standards. For all existing and prospective ETCs, a uniform set of public interest criteria followed by the FCC and all state commissions would be more predictable and equitable than 51 or more different sets. However, in the end, each state commission would need

to employ its own expertise and discretion to determine whether the specific benefits exceeded the specific costs, or vice versa. The proposed system of uniform federal regulations and state determinations is similar to that approved by the U.S. Supreme Court for local competition in AT&T v. Iowa Utilities Board, 525 U.S. 366 (1999).

Competitively Neutral Regulation. In addition to implementing an appropriate and specific public interest determination, there should also be continued monitoring of the services, service areas, service quality and rates of all competing ETCs in a competitively neutral manner.

The Western Alliance recognizes that Section 332(c)(3) of the Communications Act strips state and local governments of authority to regulate the entry or rates of commercial mobile services. In addition, Wyoming and several other states appear to have limited the jurisdiction of their state commissions to regulate cellular carriers. However, Section 214(e)(2) of the Act expressly grants state commissions the jurisdiction to designate ETCs, while Section 214(e)(6) gives the FCC jurisdiction to designate ETCs in those relatively few instances (e.g., Reservations) where no state has jurisdiction over a carrier or an area served by a carrier.

Under federal law, it is clear that a FCC-licensed wireless carrier can commence operations in a state without state commission certification, but that the state can thereafter regulate all aspects of the wireless carrier's operations (e.g., service quality and customer service practices) except its rates. At the same time, a state commission has express federal authority under Sections 214(e) and 254(f) of the Act to designate wireline and wireless carriers as ETCs, as well as to impose additional, non-conflicting standards.

Hence, when a wireless carrier voluntarily seeks ETC status in order to obtain portable high-cost support dollars, it subjects itself to the ETC jurisdiction of the state commission. This plainly includes service, service area, and service quality regulation; and also encompasses rate regulation if the FCC and state commissions impose affordable rate requirements upon all ETCs. The latter situation is equivalent to that where a private corporation is not subject per se to certain federal or state regulations, but becomes subject to them as a result of its voluntary entry into a government contract.

Even where a state legislature has limited the jurisdiction of a state commission to regulate wireless carriers, the Western Alliance believes that Section 214(e)(2) of the Act still gives that state commission jurisdiction over the designation and regulation of ETCs, including wireless ETCs. Where a state legislature prohibits a state commission from designating or regulating wireless ETCs, the Joint Board and FCC should maintain competitive neutrality by imposing upon carriers designated as ETCs under Section 214(e)(6) the same regulatory conditions and requirements imposed by the state commission upon the ETCs that it designates and regulates.

Competitively neutral regulation means, at the very minimum, that CETCs should have the same carrier of last resort obligations as the ILECs against whom they compete. In other words, if a carrier requests CETC designation so that it can receive the same types of universal service support as an ILEC, it should be required, as a condition of CETC designation, to accept and meet the same types of carrier of last resort obligations as that ILEC.

In addition, all CETCs should be required, again as a condition of CETC designation, to furnish service quality that is comparable to that provided by ILECs,

including clear and audible voice conversations, minimal call blocking, and infrequent dropped calls. One of the principal objectives of the Universal Service program is the availability of quality services. 47 U.S.C. Sec. 254(b)(1). If a carrier is receiving the same types of high-cost support as ILECs, its customers should receive the same levels of service quality. They should not be subjected to static and frequent break-up of voice signals, blocking of more than one percent (1%) of their calls, and frequent dropping of their calls.

Another foundation of the Universal Service program is that services must "be available at just, reasonable, and affordable rates." 47 U.S.C. Sec. 254(b)(1). Where state commissions regulate the rates of ILECs designated as ETCs, they should also regulate the rates of the CETCs designated in overlapping service areas, including wireless CETCs, to ensure that all ETC rates are just, reasonable and affordable. As indicated above, the limitations of Section 332(c)(3) of the Communications Act are superseded or rendered inapplicable when a wireless carrier voluntarily seeks ETC designation and subjects itself to the state commission's jurisdiction as a condition of ETC designation.

State Funding. The designation of numerous CETCs by state commissions is placing an increasing burden upon federal universal service support mechanisms. As indicated above, federal high-cost support for wireless CETCs is the fastest growing portion of the Universal Service Fund, and may increase by \$2 billion or more per year in the foreseeable future.

In Qwest Corporation v. FCC, 258 F.3d 1191 (10th Circ. 2001), the court held that the 1996 Act plainly contemplates a partnership between federal and state governments to

support universal service, and rejected arguments that the FCC alone must support the full costs of universal service. It ordered the FCC to develop mechanisms to induce adequate state action.

One such inducement would be a requirement that a state commission which exercises its discretion to designate a CETC in an area served by a rural telephone company fund the resulting additional high-cost support payments from its own State Universal Service Fund. This funding requirement would give the state commission a clear and tangible stake in the Universal Service program. It would ensure that each state commission carefully considers the costs, benefits and other public interest considerations of each request for CETC designation, and that it carefully monitors a CETC's subsequent compliance with its infrastructure investment obligations and other regulatory requirements.

**High-Cost Support Should Be Calculated and Distributed
On the Basis of Each CETC's Study Area Within Each State**

In response to the Joint Board's request for comment regarding the methodology for calculating support for ETCs in competitive study areas (Public Notice, paras. 15 and 16), the Western Alliance notes that the current system of basing support for CETCs upon the support that the incumbent ILEC would receive for the same "line" distorts investment and market entry incentives, while favoring wireless carriers and disfavoring wireline carriers.

As indicated above, high-cost support should be calculated and distributed to telecommunications carriers on the same basis that telecommunications facilities are constructed and that telecommunications services are provided -- as networks. Carriers

do not invest in and construct "lines"; they build networks. Customers do not purchase service on "lines"; they subscribe to service on a network so that they can communicate with all the other people connected to the network.

At present, ILECs receive high-cost support on the basis of the network costs within their study area in each state. Large ILECs that serve both urban and rural areas within a state often receive little or no high-cost support because the high costs of the rural exchanges in their study areas are averaged-out by the lower costs of the populous urban exchanges therein.

At present, neither wireline nor wireless CETCs receive high-cost support on the basis of their own network, service area or study area within each state. Rather, they receive portable support on the basis of the ILEC study area or areas that they overlap. This system has disadvantaged many wireline CETCs, while bestowing substantial preferences upon certain wireless CETCs. For example, wireline CETCs that have brought facilities-based competition to underserved rural communities often receive little or no portable support because the statewide study area of the Regional Bell Operating Company against which they compete does not qualify for high-cost support. In contrast, a wireless CETC whose service area and customer base is located primarily in the urban centers of a state may nevertheless receive substantial amounts of portable support if it is designated as a CETC in a couple of rural telephone company study areas (and claims that numerous customers have their "billing addresses" in these areas), even though the actual or estimated costs of its statewide service area would otherwise not enable it to qualify for high-cost support.

For example, Qwest serves not only the populous Denver, Colorado Springs and other urban areas of Colorado, but also numerous high-cost rural communities. However, because the lower per-loop costs of its Denver and other urban exchanges reduce its statewide average costs below the threshold for high-cost support, Qwest receives little or no universal service support for its Colorado study area. Should a wireline CETC overbuild one or more of Qwest's high-cost rural Colorado exchanges, the wireline CETC would get little or no portable high-cost support because Qwest receives none. However, if a wireless CETC that competes with Qwest in Denver and the other urban areas of Colorado extends its service into rural Colorado, it will not be precluded like Qwest from receiving high-cost support due to its large urban Colorado customer base. Rather, it will be able to claim substantial amounts of portable support in rural telephone company study areas. In sum, the current system is not the least bit competitively neutral, and is likely to distort market entry and investment decisions.

Competitive neutrality requires that high-cost support for all ETCs be calculated and distributed on the same basis. The Western Alliance proposes that each entity seeking designation as a CETC be assigned a "study area" comprised of all the areas that it serves within each state. If the entity subsequently expands its service area within the state, it should be required to reapply for CETC designation for the entire enlarged study area.

These state-by-state study areas should then be used to determine whether a CETC qualifies for high-cost support and how much support it should get. For example, high-cost loop support (including High-Cost Loop Support, Long Term Support, and Interstate Common Line Support or Interstate Access Support) should be calculated on

the basis of either: (a) the CETC's own actual costs in its study areas; or (b) a weighted average of the per-line loop costs of the ILEC study areas encompassed within the CETC's study area. If the CETC's study area contains 50,000 or fewer "loops" or loop equivalents, it should receive Local Switching Support (LSS) for its switch costs on the basis of either: (a) the application of the LSS formulas to its facilities; or (b) the use of the LSS of the overlapping ILECs on a wire center basis.

Calculating and distributing high-cost support on the basis of each CETC's own study area in each state will better ensure that market entry and infrastructure investment decisions are made on the basis of economic factors rather than portable support payments. It will also improve the targeting of high-cost support to the rural carriers and rural areas that need it, and minimize the ability of regional wireless carriers to "cherry-pick" portable support by serving a couple of rural telephone study areas within their heavily urban networks.

Auctions Of Universal Service Support Would Disrupt and Discourage Telecommunications Infrastructure Investment

In response to the Joint Board's question whether and how auctions might be utilized to award support (Public Notice, para. 20), the Western Alliance vigorously opposes the use of any type of competitive bidding to award universal service support.

As emphasized above, the overriding goal of the 1996 Act is to encourage investment in telecommunications infrastructure. Whether the means of accomplishing this goal is competition or universal service (where competition does not develop or does not produce the desired result), the goal is to encourage infrastructure investment.

Telecommunications facilities are very capital-intensive, and require investments that must be recovered over lengthy periods (often, 10 years or more). Such investments

will not be financially feasible unless the owners, investors and lenders of rural carriers have reasonable assurance that their costs will be recovered.

It is hard to conceive of any mechanism that could disrupt telecommunications investment decisions and cost recovery any more than the auctioning of universal service support. What rational owner, investor or lender of a rural carrier will approve an investment that must be amortized over ten or more years if a significant portion of the required cost recovery stream may be eliminated or reduced at any time during the period due to the workings of an auction? What rural telephone company could get its owners, investors or lenders to approve a new \$1.25 million switch replacement or a \$2.5 million plant upgrade if the high-cost support that constitutes 40-to-50 percent of its revenue stream might be eliminated or cut in half next year due to a universal service auction?

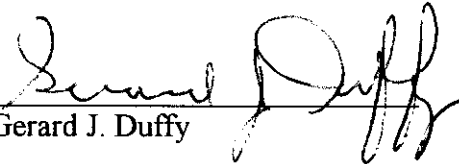
Auctions of universal service support would create unnecessary and disruptive uncertainty regarding future cost recovery that would severely curtail future infrastructure investment. As such, auctions would violate the "specific, predictable and sufficient" principle of Section 254(b)(5) of the Act, as well as the "specific and sufficient" requirement of Section 254(e).

Conclusion

The Western Alliance urges the Joint Board and FCC to implement the statutory requirement of Section 214(e) of the Communications Act that designations of CETCs in rural telephone company study areas be made only when they are in the public interest. It proposes the employment of specific cost-benefit analyses to ensure that additional infrastructure investment and other concrete benefits of CETC designation outweigh the

incremental portable support and other costs thereof. The Western Alliance proposes that all wireline and wireless ETCs be subject to competitively neutral carrier of last resort obligations, service quality standards and rate regulation, and that state commissions be required to fund the resulting additional high-cost support for the CETCs they designate. Where a wireline or wireless carrier is designated as a CETC, the Western Alliance proposes that it be assigned a study area in each state for the determination, calculation and distribution of its high-cost support. Finally, the Western Alliance opposes the use of auctions or other competitive bidding mechanisms to determine eligibility for or amounts of support. All of these Western Alliance proposals are based upon the overriding goal of the 1996 Act that private sector investment in telecommunications infrastructure be encouraged.

Respectfully submitted,
THE WESTERN ALLIANCE

By 
Gerard J. Duffy

Its Attorney

Blooston, Mordkofsky, Dickens, Duffy & Prendergast
2120 L Street, NW (Suite 300)
Washington, DC 20037
Telephone: (202) 659-0830
Facsimile: (202) 828-5568

Dated: May 5, 2003

CERTIFICATE OF SERVICE

I, Douglas W. Everette, hereby certify that I am an attorney with the law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, and that copies of the foregoing Comments were served by first class U.S. mail or hand delivery* on this 5th day of May, 2003 to the persons listed below:

*Marlene H. Dortch, Secretary
Federal Communications Commission
236 Massachusetts Avenue, NE
Suite 110
Washington, DC 20002

*Chairman Michael K. Powell
Federal Communications Commission
445 12th Street SW – Room 8-B201
Washington, DC 20554

*Commissioner Kathleen Q. Abernathy
Federal Communications Commission
445 12th Street SW – Room 8-B115
Washington, DC 20554

*Commissioner Michael J. Copps
Federal Communications Commission
445 12th Street SW – Room 8-A302
Washington, DC 20554

*Commissioner Kevin J. Martin
Federal Communications Commission
445 12th Street SW – Room 8-A204
Washington, DC 20554

*Commissioner Jonathan S. Adelstein
Federal Communications Commission
445 12th Street SW – Room 8-C302
Washington, DC 20554

Thomas Dunleavy
Commissioner New York State Public
Service Commission
Three Empire State Plaza
Albany, New York 12223- 1350

Lila A. Jaber
Commissioner Florida Public Service
Commission
2540 Shumard Oak Boulevard
Gerald Gunter Building
Tallahassee, Florida, 32399- 0850

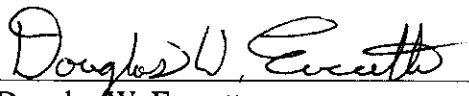
Bob Rowe
Commissioner Montana Public Service
Commission
1701 Prospect Avenue
P. O. Box 202601
Helena, MT 59620- 2601

Nan Thompson
Alaska Public Utilities Commission
1016 West 6th Ave, Suite 400
Anchorage, AK 99501

Billy Jack Gregg
Director Consumer Advocate Division
723 Kanawha Boulevard, East
7th Floor, Union Building
Charleston, West Virginia 25301

*Qualex International
Portals II
445 12th St. S.W.
Room CY-B402
Washington DC 20554
qualexint@aol.com

*Sheryl Todd
Telecommunications Access Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street SW — Room 5-B540
Washington, D.C. 20554



Douglas W. Everett